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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 KELON MICHAEL WILLIAMS,

12 Petitioner,

2:04-cv-2284-GEB-DAD-P

13 vs.

14 HIGH DESERT STATE PRISON, et al,

15 Respondents.

ORDER

16 _____/
17 Petitioner, a state prisoner proceeding pro se, has filed this application for a writ
18 of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States
19 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

20 On September 29, 2008, the magistrate judge filed findings and recommendations
21 herein which were served on all parties and which contained notice to all parties that any
22 objections to the findings and recommendations were to be filed within twenty days. Petitioner
23 has filed objections to the findings and recommendations.

24 The magistrate judge noted in the findings and recommendations that petitioner
25 raised an argument on appeal in state court that was not raised in the instant habeas petition – that
26 his confession to his girlfriend was “tainted” by his prior unlawful confession to the police and

1 should have been suppressed at his trial. (September 29, 2008 findings and recommendations at
 2 7.) The magistrate judge addressed the only argument raised in the petition before this court –
 3 that petitioner’s statements to his girlfriend resulted from a continuing unlawful police
 4 interrogation. In his objections to the findings and recommendations, petitioner appears to be
 5 claiming, as he did in state court, that his statements to his girlfriend were “tainted” by his prior
 6 unlawful confession to the police.

7 “A traverse is not the proper pleading to raise additional grounds for relief.”
 8 Cacoperdo v. Demosthenes, 37 F.3d 504, 507 (9th Cir. 1994). However, a district court “has
 9 discretion, but is not required,” to consider evidence and claims raised for the first time in the
 10 objection to a magistrate judge's report. United States v. Howell, 231 F.3d 615, 621 (9th Cir.
 11 2000). See also Brown v. Roe, 279 F.3d 742, 745 (9th Cir. 2002). Regardless of whether
 12 petitioner intended to raise a claim in the instant petition that his confession to his girlfriend was
 13 tainted by his prior unlawful confession to police or whether he is making that claim in his
 14 objections for the first time, this court will deny the claim on the merits.

15 Unlike evidence obtained through a Fourth Amendment violation, the Miranda
 16 presumption¹ does not require that the "fruits [of unlawfully obtained confessions] be discarded
 17 as inherently tainted." Oregon v. Elstad, 470 U.S. 198, 307 (1985). On the contrary,

18 [i]t is an unwarranted extension of Miranda to hold that a simple
 19 failure to administer the warnings, unaccompanied by any actual
 20 coercion or other circumstances calculated to undermine the
 21 suspect's ability to exercise his free will, so taints the investigatory
 22 process that a subsequent voluntary and informed waiver is
 ineffective for some indeterminate period.... [T]he admissibility of
 any subsequent statement should turn in these circumstances solely
 on whether it is knowingly and voluntarily made.

23 Id. at 309. Relying on Elstad, the Ninth Circuit has held that the admissibility of an unsolicited
 24 inculpatory statement, following a voluntary statement made in violation of Miranda, turns on

26 ¹ See Miranda v. Arizona, 384 U.S. 436 (1966).

1 whether the inculpatory statement was knowingly and voluntarily made. Medeiros v. Shimoda,
2 889 F.2d 819, 824-25 (9th Cir. 1989). Petitioner's confession to the police was obtained in
3 violation of Miranda and Edwards v. Arizona, 451 U.S. 477, 485 (1981), but was not coerced or
4 involuntary. Accordingly, the admissibility of petitioner's subsequent confession to his girlfriend
5 turns on whether it was knowingly and voluntarily made.

6 A confession is voluntary if it is "the product of a rational intellect and a free
7 will." Medeiros v. Shimoda, 889 F.2d 819, 823 (9th Cir. 1989) (quoting Townsend v. Sain, 372
8 U.S. 293, 307 (1963)). See also Blackburn v. Alabama, 361 U.S. 199, 208 (1960).

9 Voluntariness is to be determined in light of the totality of the circumstances. See Miller v.
10 Fenton, 474 U.S. 104, 112 (1985); Haynes v. Washington, 373 U.S. 503, 513 (1963); Beatty v.
11 Stewart, 303 F.3d 975, 992 (9th Cir. 2002). In the end, the court must determine under the
12 totality of the circumstances whether "the government obtained the statement by physical or
13 psychological coercion or by improper inducement so that the suspect's will was overborne."
14 Beatty, 303 F.3d at 992 (quoting United States v. Leon Guerrero, 847 F.2d 1363, 1366 (9th Cir.
15 1988)). See also Hutto v. Ross, 429 U.S. 28, 30 (1976).

16 The California Court of Appeal conducted a thorough analysis of relevant United
17 States Supreme Court authority in reaching its conclusion that petitioner's statements to his
18 girlfriend were voluntarily and therefore were not tainted by the prior unlawful interrogation.
19 (Opinion at 10-13.) The state court's decision is not contrary to or an unreasonable application
20 of federal law and should not be set aside. 28 U.S.C. § 2254(d). As discussed by the California
21 Court of Appeal, there is no evidence that petitioner's confession to his girlfriend was the result
22 of coercion or was otherwise involuntary. Accordingly, petitioner's claim that his confession to
23 his girlfriend was tainted by his prior confession to police is rejected.

24 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule
25 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the

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1 entire file, the court finds the findings and recommendations to be supported by the record and by
2 proper analysis.

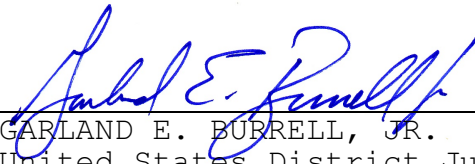
3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Petitioner's claim that his conviction was obtained through a confession that
5 was tainted by a prior unlawful police interrogation is denied;

6 2. The findings and recommendations filed September 29, 2008, are adopted in
7 full; and

8 3 Petitioner's application for a writ of habeas corpus is denied.

9 Dated: November 26, 2008

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12 GARLAND E. BURRELL, JR.
United States District Judge
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